

REMARKS/ARGUMENTS

Favorable reconsideration of this application as currently amended and in view of the following remarks is respectfully requested.

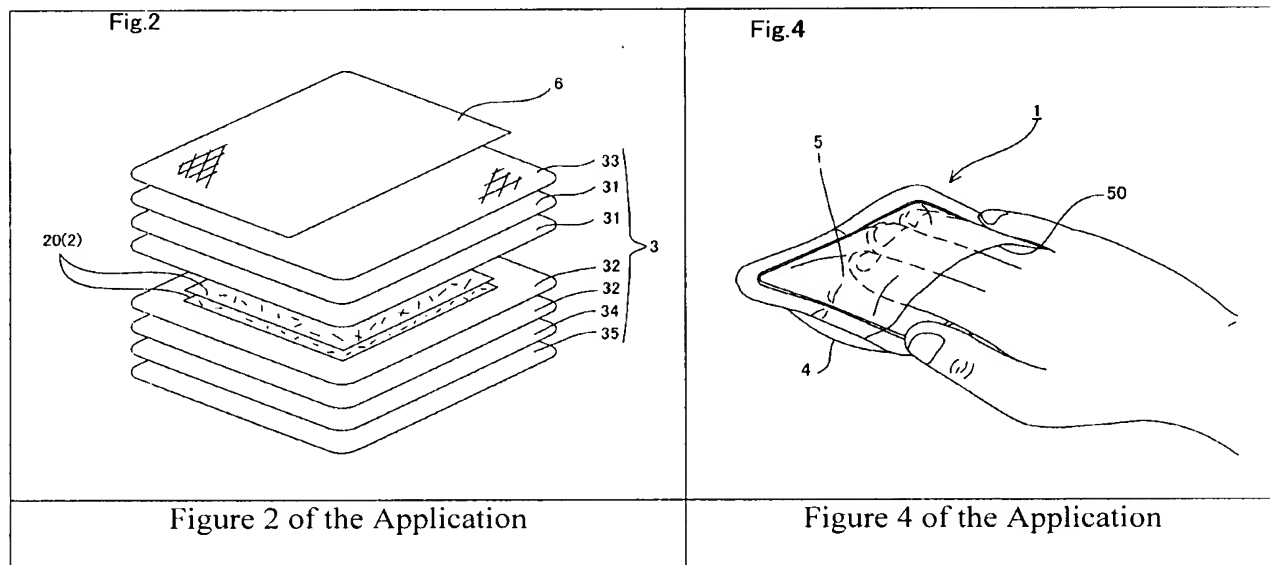
Claims 1-5, 7-10, 12-16, 18, and 19 are currently active in this case.

In the outstanding Office Action, claims 1-5 and 7-10 were rejected on the ground of non-statutory obviousness type double patenting; claims 1, 2, 4, 5, 7-10 and 19 were rejected under 35 U.S.C. §103(a) as unpatentable over Japanese Patent Application Publication No. 01-201253 to Yahara et al. in view of U.S. Patent Publication No. 2001/0049546 to Dvoretzky et al.; claims 12-18 were rejected under 35 U.S.C. §103(a) as unpatentable over Yahara et al.; and claim 3 was rejected under 35 U.S.C. §103(a) as unpatentable over Yahara et al. and Dvoretzky et al. in view of Toru.

In response to the obviousness type double patenting rejection, Applicants submit herewith a Terminal Disclaimer. No further rejection on the basis of double patenting is therefore anticipated.

Briefly recapitulating, the present invention (Claim 1) is directed to a warming article including a heat generating main body and a receiving part configured to receive a part of a human body. The heat generating main body includes a heat generating element configured to generate water vapor, and an air permeable holder configured to hold the heat generating element. The holder includes an air impermeable layer and an air permeable layer. The heat generating main body is expandable by water vapor generated with heat generation of the heat generating element, the air permeable layer and the air impermeable layer are provided on opposite sides of the heat generating element, and the receiving part is provided on the side of the air permeable layer. By way of non-limiting example, Figure 2 illustrates that the warming article includes an air permeable holder including air permeable sheet 31 and an air impermeable sheet 32. The heating element 20(2) is provided between sheets 31 and 32. A

receiving part member 6 forms part of an insertion opening 50. See page 20, lines 19-21 of the Specification. See also Figure 4 which illustrates a hand inserted in the in the insertion opening 50.



As a consequence of this configuration, the warming article provides a moisturizing function in the receiving part as well as a heating function. When the warming article is combined with any functional agent, the claimed configuration enhances penetration of the functional agent. See the Specification, page 17, lines 1-9.

Similar to Claim 1, Claim 7 defines a warming article wherein the heat generating element of the heat generating main body generates 1 to 100 mg per (cm<sup>2</sup> x 10 min) of water vapor.

Claim 12 is directed to the heat generating article and provides that a molded sheet includes an oxidizable metal, a moisture retaining agent, and a fibrous material and has a maximum stress of 0.3 to 5 MPa and a breaking elongation of 2 to 10%. The molded sheet is disposed between an air permeable sheet and an air impermeable sheet and **three-dimensionally shaped** together with the air permeable sheet and the air impermeable sheet.

Applicants distinguished three dimensionally shaped heat generating elements from “sheet form” heat generating elements on page 2, lines 4-6.

Regarding claims 1 and 7, and as acknowledged in the office action, Yahara et al. fail to teach a receiving part configured to receive a part of the body which is provided on the air permeable side of the holder. Applicants agree. However, the Official Action further asserts that Dvoretzky et al. remedies the deficiencies of Yahara et al. Applicants respectfully traverse.

Dvoretzky et al. is directed to a holding member 21 which peripherally surrounds a pre-positioned exothermic pad or heat delivery patch 28. See para. [0077] of Dvoretzky et al. That is, Dvoretzky et al. disclose a separate heating element which is applied to the body and a holding member which subsequently is placed around the heating element. See e.g., paras. [0057], [0067], [0068], and [0072]. Thus, Dvoretzky et al. fails to teach or suggest an air permeable layer and an air impermeable layer provided on opposite sides of the heat generating element 28, and a receiving part provided on the side of the air permeable layer.

Accordingly, Dvoretzky et al. does not address the deficiency of Yahara et al. which also fails to disclose or suggest a receiving part configured to receive a part of the body which is provided on the air permeable side of the holder. For the foregoing reasons, Yahara et al. are not believed to anticipate or render obvious the subject matter defined by Claims 1 and 7 when considered alone or in combination with Dvoretzky et al.

Regarding Claim 12, Applicants respectfully submit that the Office Action fails to give any weight to the term “three-dimensionally shaped” or is giving that term an unreasonably broad interpretation in light of Applicants’ Specification. As pointed out above, Applicants intended to distinguish their invention over sheet shaped members.

As pointed out in the “Industrial Field of Application,” the Dvoretzky et al. heating member has a sheet-shape. Hence, Dvoretzky et al. does not anticipate a “molded sheet

disposed between an air permeable sheet and an air impermeable sheet and ***three-dimensionally shaped together*** with the air permeable sheet and the air impermeable sheet” as required by claim 12.

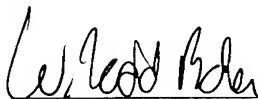
The Official Action further asserts that it would have been obvious as a matter of design choice to modify the molded sheet of Yahara et al. to have the claimed properties of claim 12. Applicants respectfully traverse. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) holds that the cited reference[s] must recognize a particular parameter as a result-effective variable before concluding that discovering an optimum value of the variable involved only routine skill in the art. Neither Yahara et al. nor Dvoretsky et al. recognize a maximum stress or a breaking elongation as being result-effective. Hence, the obviousness rejection applying Yahara et al. and Dvoretsky et al. should be withdrawn.

Consequently, Yahara et al. are not believed to anticipate or render obvious the subject matter defined by Claim 12 when considered alone or in combination with Usui.

In view of the foregoing, no further issues are believed to be remaining. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Richard L. Chinn  
Attorney of Record  
Registration No. 34,305

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)

W. Todd Baker  
Registration No. 45,265